

**WAC 208-680-540 What are my obligations regarding escrow transactions?** The escrow agent is responsible for providing escrow services between the principal parties. In addition to complying with the act and these rules, an escrow agent must at a minimum:

(1) **Escrow instructions.**

(a) Prepare or accept an instrument of escrow instructions from and agreed to by the principal parties and the escrow agent. The escrow instructions must be signed by the principal parties. Escrow instructions must contain any and all agreements between the principal parties and the escrow agent or incorporate other written agreements by reference. The escrow instructions must not be modified except by written agreement signed by all principal parties and accepted by the escrow agent.

(b) Comply with the escrow instructions for completing the settlement statement. All funds disbursed on the settlement statement should be bona fide and supported with adequate documents.

(c) Provide the services and perform all acts pursuant to the escrow instructions.

(2) **Fee disclosures.** Disclose in writing to the principal parties when fees for services provided may be earned by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the settlement statement (both the estimated and final) provided for any transaction subject to the act, and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent mean any item payable directly to the escrow agent whether accounted for by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) **Justifiable fees.** Ensure that all fees are for bona fide services and bear a reasonable relationship in value to the services performed, regardless of whether the services are performed by the escrow agent or by a third party under contract with the escrow agent. No charges known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the charge for the third-party service on the preliminary settlement statement, disclose the actual charge for the third-party service on the final disclosure statement, and refund any amounts collected in excess of the actual charge for the third-party service to the principal parties;

(b) Assume responsibility for performing the service and charge the principal parties a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680-410; or

(c) If conducting a subescrow transaction, charge the principal parties the average charges as determined by the master escrow agent or title insurance company.

(4) **Recordkeeping.** Maintain copies of the escrow instructions and settlement statement in the escrow transaction file.

(5) **Addendums.** Require an addendum to the purchase agreement for any and all material changes in the terms of the escrow transaction

including, but not limited to, changes in the financing of the transaction.

(6) **Settlement statements.**

(a) Provide a complete detailed settlement statement as it applies to each principal at the time the transaction is closed.

(b) Provide copies of the final settlement statement to each real estate broker or agent involved with the transaction.

(c) The escrow agent must retain a copy of all settlement statements in the transaction file, even if funds are not handled by the agent. The settlement statements must show, at a minimum:

(i) The date of closing;

(ii) The total purchase price;

(iii) An itemization of all adjustments, moneys or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500, and all other applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received. If there is not enough room on the settlement statement for a full itemization, itemization may be provided on an addendum as long as a copy of the addendum was also provided to the principal parties and is included in the transaction file;

(iv) A detail of debits and credits identified to each principal party; and

(v) Names of payees, makers and assignees of all notes paid, made or assumed.

(7) **Payment of proceeds.** Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

(8) **Obtain signatures.** Obtain original signatures of the principal parties on either the preliminary or final settlement statement and maintain a copy of the signed settlement statement in the escrow transaction file, unless the escrow instructions authorize use of faxed or electronic signatures. If an escrow agent completes a transaction based on faxed signatures in accordance with the escrow instructions, it must obtain original signatures for the file only if the escrow instructions so require.

[Statutory Authority: Chapter 43.320 RCW, RCW 18.44.410. WSR 16-08-028, § 208-680-540, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 18.44.410. WSR 13-24-022, § 208-680-540, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). WSR 10-20-124, § 208-680-540, filed 10/5/10, effective 11/5/10.]